

Legislative Options for Identity Theft Prevention, Redaction of Personal Information, the Dissemination of Public Real Estate Records, and Related Issues

Definition of Personally Identifiable Information

Issue Summary. Recent concerns about personal information embedded within images of public real estate documents focused on social security numbers, and bank account, credit and debit card numbers. A definition of “personally identifiable information” which includes these items is currently provided in section 331.606A.

Legislative Option. An expanded definition of personally identifiable information may not be required to address the recent privacy concerns. If the General Assembly wishes to use a similar definition for other public agencies and records, it may be sufficient to cross reference section 331.606A.

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Duty To Redact Personally Identifiable Information From Electronic Records

Issue Summary. While current law prohibits document preparers from including personally identifiable information in real estate documents and requires Recorders to have a redaction procedure in place, recent concerns indicate that a more comprehensive redaction process is expected. Additionally, Recorders have expressed some uncertainty about their statutory authority to redact information from real estate documents and about whether all or a portion of personally identifiable information should be redacted. An amendment to Section 331.606A may help clarify these issues.

Legislative Option. Amend Section 331.606A as follows:

1. Section 331.606A, subsection 1, paragraph c is amended as follows:
“c. “Redact” or “redaction” means the process of process of permanently removing all or a portion of any personally identifiable information from documents.”
2. Section 331.606A, subsection 1, is amended by inserting the following lettered paragraph “d”:
“d. “Electronic document” means a document that is received, processed, disseminated or maintained in an electronic form.”
3. Section 331.606A, subsection 3 is amended by striking the subsection and inserting in lieu thereof the following,
“3. Redaction of electronic documents. Electronic documents which are displayed for public access through a web site, or which are transferred to any person or organization for commercial purposes shall be redacted. A recorder or a county land records information system which aggregates electronic documents on behalf of counties shall implement a commercially reasonable system for redacting personally identifiable information. Additionally, a recorder or a county land records information system shall establish a procedure by which individuals may request that personally identifiable information be redacted, at no fee to the requesting individual, in the event that the redaction system fails to redact personally identifiable information about the individual.
4. Section 331.606A, subsection 5, is amended by striking the subsection and inserting in lieu thereof the following:
“5. Applicability. Requirements for the preparer of a document as specified in subsection 2 shall not apply to a state or federal tax lien or release, a military separation or discharge record, or a death certificate that is prepared for recording in the office of a county recorder. Requirements for redaction as specified in subsection 3 shall not apply to a military separation or discharge record, or a birth record, death record, or marriage certificate unless it is incorporated within another document or instrument which is recorded. If a military separation or discharge record or a death certificate is recorded in the office of the county recorder, the military separation or discharge record or the death certificate shall not be displayed for public access through a web site, public access terminal or other medium, or be transferred to any person or organization for commercial purposes.”
5. The requirements of section 4 of this act with respect to electronic documents maintained by a county recorder shall be completed not later than December 31, 2011. The requirements of section 4 of this act with respect to electronic documents to be displayed for public access through a web site, or which may be transferred to any person or organization for commercial purposes shall be fulfilled prior to displaying or transferring the electronic documents.

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Duty To Preserve An Unaltered Record of Real Estate Transactions

Issue Summary. Recorders in many counties have previously taken the initiative to redact social security numbers from real estate documents. As additional steps are taken to redact personally identifiable information from electronic documents, it is important that unaltered versions of each document be archived in the event that it is necessary that the personally identifiable information be accessible to authorized persons or organizations.

Legislative Option.

1. Section 331.606, is amended by inserting the following new subsection:

“4. The county recorder shall ensure that an unaltered version of each recorded document or instrument is permanently archived. A document may be archived in its original format, as an electronic document or in another media suitable for preserving information in the document.

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Local Access

Duty To Provide Access to Records in the Office of the County Recorder

Issue Summary. Recorders and other county officials have been required to provide open access to records housed in the courthouse or other county administrative facilities. The “golden rules” of public records have required recorders to provide access to records without restrictions. While privacy activists have recommended that access to any record with personally identifiable information be restricted, there could be substantial cost and service disruption if redaction requirements were applied to documents archived in traditional formats such as paper or microfilm. Legislation may be needed to clarify that individuals may continue to view and copy records when visiting the Office of the County Recorder.

Legislative Option.

1. Section 331.606A, subsection 2, is amended as follows:

“2. Inclusion of personally identifiable information. The preparer of a document shall not include an individual’s personally identifiable information in a document that is prepared and presented for recording in the office of the recorder. This subsection shall not apply to documents that were executed by an individual prior to July 1, 2007. ~~Unless provided otherwise by law, all documents described by this section are subject to inspection and copying by the public.~~”

2. Section 331.606A is amended by inserting the following new subsection:

“6. Access to original or unaltered records. An individual may view and copy an original or unaltered record in the office of the county recorder.”

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Limitation Of Liability

Issue Summary. County recorders and the county land records information system have been in compliance with laws governing public access to real estate records. Nevertheless their actions have been the subject of public criticism and potential exposure to liability for the disclosure of personally identifiable information. Assuming that a comprehensive redaction process is implemented, it is known that commercially available redaction services have some level of error. If commercially reasonable redaction processes are implemented, county recorders and the governing body for the county land records information system may desire protection from liability.

Legislative Option.

2. Section 331.606A is amended by inserting the following new subsection:

“7. Limitation Of Liability. County recorders, members of the board and persons acting on behalf of the governing board and sponsoring organization of the county land records information system, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties of this section.

The governing board and sponsoring organization of the county land records information system shall not be liable for any act or omission associated with the public disclosure of personally identifiable information if commercially reasonable practices were implemented to redact or otherwise restrict access to personally identifiable information.

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Dissemination of Public Real Estate Records

Issue Summary. Questions have been raised about whether county recorders or the county land records information system have the authority to provide external organizations with access to real estate records in “bulk” or batch electronic files. County recorders have a history of selling data to external organizations in formats such as CDs or DVDs. However, the practice has received additional scrutiny due to the proposed sale of files to an external organization by the county land records information system. A part of the concern relates to the sale of files which may contain personally identifiable information. Legislation may be needed to clarify the authority to sell land record files.

Legislative Option.

New Section 331.602A Sale of Records

1. A county recorder or the county land records information system may provide access to bulk or batch “electronic documents” as defined in section 331.606A or a “record” as defined in section 331.601A.
2. Electronic documents and records shall not include personally identifiable information or shall be subjected to a commercially reasonable redaction process prior to the transfer of any electronic documents or records.
3. Individuals or organizations which are provided with access to electronic documents and records shall certify that they will not provide electronic documents in bulk to any Third Party without the permission of the county recorder or the governing board of the county land records information system as applicable.
4. A county recorder or the county land records information system may seek reasonable fees for access to the electronic documents and records subject to mutual agreement with the individual or organization.

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County Land Records Information System Enabling Cleanup

Issue Summary. The enabling legislation for the county land records information system was embedded within provisions for the Electronic Transaction Fee under section 331.605C. During the five years since the enactment of the original enabling legislation many structures and policies have been established under a 28E agreement among the participating counties. It would be beneficial to have some of these structures and policies codified to ensure the long-term success of the system.

Legislative Option.

New Section 331.602A County Land Records Information System

1. A county land records information system is established to provide statewide access to real estate records and to enable the electronic submission and recording of documents in all counties through a web site administered through the governing board of the county land records information system, a 28E organization.
2. The governing board of the county land records information system shall adopt policies and procedures governing the following activities administered by counties and the county land records information system.
 - a. Standards for electronic indexing of recorded documents and instruments by county recorders.
 - b. Document standards or document formatting standards to carry out the requirements of sections 331.606B and 331.607.
 - c. Electronic document standards including standards relating to document image formats and standards for archiving electronic documents.
 - d. Standards and guidelines for the electronic submission, processing and recording of documents and instruments.
 - e. Access to real estate records through county and county land records information system web sites.
 - f. Measures to protect personally identifiable information, and to prevent identity theft and land fraud.
 - g. Fees for electronic submission services and access to bulk or batch files.
3. Each county shall participate in the county land records information system and shall comply with the policies and procedures established by the governing board of the county land records information system.
4. The submission of an electronic document through the county land records information system electronic submission service shall be deemed equivalent to delivery of a document through the U.S. mail, courier service or over-the-counter at designated offices in each county or jurisdiction. Organizations and individuals who submit electronic documents for recording are responsible for ensuring that the electronic documents are legally valid and comply with all requirements for recording.

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Funding For Redaction and ILR Operations

Issue Summary. Redaction processes and the reconfiguration of the image repository and operating system may be needed to ensure the protection of personally identifiable information. Cost estimates for these activities are currently being refined, and a request for proposals relating to redaction services will soon be published. Additional resources are also needed to ensure the long-term sustainability of the system including funding for local maintenance agreements. Options to secure the necessary funding must be explored. In the absence of additional resources, the system will continue to operate with access to index information only, maintenance of electronic submission services, and incremental improvements to basic functions. Possible options include an increase in the electronic transaction fee under section 331.605C, authorization to reconfigure the system as a subscription service similar to the Iowa Court Information System, or both.

Legislative Option.

Subscription Service

1. Amend Section 331.605B, subsection 2, by striking the subsection and inserting in lieu thereof the following:

- “2. The county land records information system may establish additional fees for services provided through the county land records information system including but not limited to the following.
- a. A subscription fee for online access to document indexing information and document images.
 - b. A service fee for the electronic submission service.
 - c. A fee for access to electronic records and index information provided in bulk or batch format.
 - d. Other fees as may be deemed necessary by the governing board of the county land records information system in order to provide additional services or to ensure the long-term sustainability of the system.

AND/OR

Electronic Transaction Fee Increase

1. Amend Section 331.605C by adding the following new subsections:

- “___. For the period beginning July 1, 2009 and ending December 31, 2010, the recorder shall collect a fee of three dollars for each recorded transaction, regardless of the number of pages, for which a fee is paid pursuant to section 331.604 to be used for the following purposes.
- a. maintaining and improving the statewide internet website and county land records information system.
 - b. integrating information about records maintained by county recorders with the county land records information system and other land record information from various sources.
 - c. implementing a process of redacting personally identifiable information from electronic documents which are displayed for public access through a web site, or which are transferred to any person or organization for commercial purposes.

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“___. Beginning January 1, 2011, the recorder shall collect a fee of two dollars for each recorded transaction, regardless of the number of pages, for which a fee is paid pursuant to section 331.604 to be used for the following purposes.

- a. maintaining and improving the statewide internet website and county land records information system.
- b. integrating information about records maintained by county recorders with the county land records information system and other land record information from various sources.
- c. maintaining a process of redacting personally identifiable information from electronic documents which are displayed for public access through a web site, or which are transferred to any person or organization for commercial purposes.
- d. establishing and implementation standards for recording and for processing and archiving electronic documents and files.
- e. expanding access to records by encouraging electronic indexing and scanning of documents recorded in prior years.
- f. other activities as may be deemed necessary by the governing board of the county land records information system.

To the extent possible, any available resources not otherwise committed to the purposes specified in this section shall be allocated by the county land records information system to reduce or eliminate any service fees for electronic submission services.”

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